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OPINION

OF THE CONFLICT OF INTEREST COMMISSIONER PURSUANT TO SECTION 19(2) OF THE *MEMBERS' CONFLICT OF INTEREST ACT*

IN THE MATTER OF AN APPLICATION BY CHRIS DELANEY WITH RESPECT TO ALLEGED CONTRAVENTIONS OF PROVISIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT* BY THE HONOURABLE STAN HAGEN, MLA (COMOX VALLEY)

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City of Victoria
Province of British Columbia
February 13, 2003

Office of the Conflict of Interest Commissioner

The Honourable H. A. D. Oliver, Q.C.
Commissioner

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IN THE MATTER OF AN APPLICATION BY CHRIS DELANEY WITH RESPECT TO ALLEGED CONTRAVENTIONS OF PROVISIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT* BY THE HONOURABLE STAN HAGEN, MLA (COMOX VALLEY)

By a letter dated February 6, 2003 Mr. Chris Delaney requests my opinion pursuant to the provisions of section 19(2) of the *Members' Conflict of Interest Act*. His letter of application is reproduced below.

Application:

> As a member of the public, and leader of a political party in British Columbia, I am filing a Conflict of Interest complaint against the BC Liberal Agriculture, Food and Fisheries Minister, Mr. Stanley Hagen. I have reasonable and probable grounds to believe the minister is in a conflict of interest with respect to his duties in this ministry, based on the following information:
>
> 1. Mr. Hagen received donations totaling $5,000 from three separate fish farming companies to help finance his personal political campaign for election during the 2001 Provincial Election.
>
> 2. As Minister of Agriculture, Food and Fish, Mr. Hagen is in a position to directly influence the decision of whether to grant or revoke fish farming licenses to companies in this industry.
>
> Based on this information, I believe the minister has the opportunity to personally benefit his private political interests for re-election by being able to grant licenses to the companies who donated to him, or by being able to protect their current licenses from being revoked.
>
> I respectfully request that you render an opinion on this very serious and alleged conflict to determine if the minister is in a breech of *The Members' Conflict of Interest Act.*

Discussion

Campaign Contributions:

In our system of Parliamentary Democracy campaign contributions and assistance are to be encouraged and fostered and must be seen in a positive light as an interest accruing not only to a political party but also to the public generally. The mere receipt of a private interest does not constitute a breach of the act. If it were otherwise, no citizen could ever make a campaign contribution at election time for any candidate or knock on doors or stuff envelopes or answer telephones or drive the elderly to the polling booth without thereby risking possible disqualification from a variety of activities under the *Members' Conflict of Interest Act*. Each

case must always be looked at individually and all the surrounding circumstances taken into account.

At the time these contributions were made, Mr. Hagen was, of course, not a Minister nor was there any suggestion that he might in due course become Minister of Agriculture Food and Fisheries.

Fish Farm Licensing Procedure

I have ascertained that there is in existence a license and permit structure for Aquaculture which is followed in every case. A copy of the schematic outline for that structure is attached. It will be observed that the structure is a fairly stringent one and makes no provision for reference to or input by the Minister. I understand from the Senior Licensing Officer that in her many years with the Ministry, all licence applications have gone through her office and none has ever been either approved or denied beyond the licensing level maintained by her.

Members' Conflict of Interest Act

Your application alleges a conflict of interest by the Minister. The relevant sections of the Act are as follows:

Conflict of interest

2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

Conflict of interest prohibition

3 A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

It will be observed that the mere existence of a conflict of interest does not constitute an offence under the *Act*. It is necessary first to establish whether there exists a private interest which may be furthered by the exercise of a member's official power, duty or function. In the event that the evidence establishes that that question is to be answered in the affirmative, one must then proceed to section 3 which prohibits the exercise of an official power, duty or function if a conflict exists. It follows that the opportunity alone to derive a private benefit is no offence unless there is an infraction of section 3 of the *Act*.

Procedure on Conflict of Interest

If a member (of the Legislative Assembly or of Executive Council) has reasonable grounds to believe that he has a conflict of interest in a matter coming up in the Legislative Assembly or Cabinet or a Committee there is a carefully crafted procedure provided by section 10 of the *Members' Conflict of Interest Act* which reads as follows:

10 (1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present at a meeting considering the matter,

(a) disclose the general nature of the conflict of interest, and

(b) withdraw from the meeting without voting or participating in the consideration of the matter.

(2) If a member has complied with subsection (1), the Clerk of the Legislative Assembly or secretary of the meeting must record

(a) the disclosure,

(b) the general nature of the conflict of interest disclosed, and

(c) the withdrawal of the member from the meeting.

(3) The Clerk of the Legislative Assembly or secretary of the meeting must file the information recorded under subsection (2) with the commissioner,

(a) in the case of a meeting of the Legislative Assembly or a committee of the Legislative Assembly, as soon as practicable, and

(b) in the case of a meeting of the Executive Council or a committee of the Executive Council, as soon as practicable after the Executive Council's decision on the matter which has been the subject of the disclosure is made public.

(4) The commissioner must keep all information filed under subsection (3) in a central record kept for that purpose and must

(a) make the central record available for inspection by any person without charge during normal business hours, and

(b) on request by any person provide a copy of the record or portion of it on payment of a reasonable copying charge.

Compliance with the Act

I am satisfied that Minister Hagen is fully aware of the Statutory provisions to which I have drawn attention. I had a consultation with Minister Hagen when he was appointed to his present portfolio and I quote from a Letter of Direction sent by Minister Hagen to the Acting Deputy Minister of Agriculture, Food and Fisheries:

Letter of Direction:

> Conflict of Interest
>
> "My obligations under the *Members' Conflict of Interest Act* require me to refrain from having ministerial dealings with matters that may be seen as benefiting Omega Salmon Group Ltd., Heritage Aquaculture West Coast Ltd. and Akua Feed Systems.
>
> To ensure that there will be no breach of the Act, I am directing you, as my Deputy Minister, to ensure that I have no involvement in the matters referred to above. If issues arise with respect to these companies you should deal with those issues at the bureaucratic level. However, if they cannot be dealt with at that level because they require the exercise of ministerial discretion, they must be brought to the attention of my backup ministers for decision. I must not be briefed on their decision until after their decision has been made.
>
> If issues arise with respect to those companies that require consideration by Cabinet, or a cabinet committee of which I am a member, I am directing you to advise me well in advance of any meetings where the issues will be discussed. I am to be informed of the fact that the issues is on the agenda. I do not want to be briefed on any of the details until after a decision is made."

At the same time the Minister sent an identical letter of direction to the Deputy Minister of Sustainable Resource Management (the Minister's other portfolio).

COMMISSIONER'S OPINION

1. There is no allegation that campaign contributions made to the Minister's campaign at the time of the 2001 Provincial election from three named fish farming companies were intended by the contributors to benefit competitor corporations and I do not believe that they would have any such effect.

2. I find that the Hon. Stanley Hagen, MLA does not have any existing conflict of interest as alleged, and that the Minister is not in breach of the *Members' Conflict of Interest Act* as alleged in Mr. Delaney's letter of February 6, 2003.

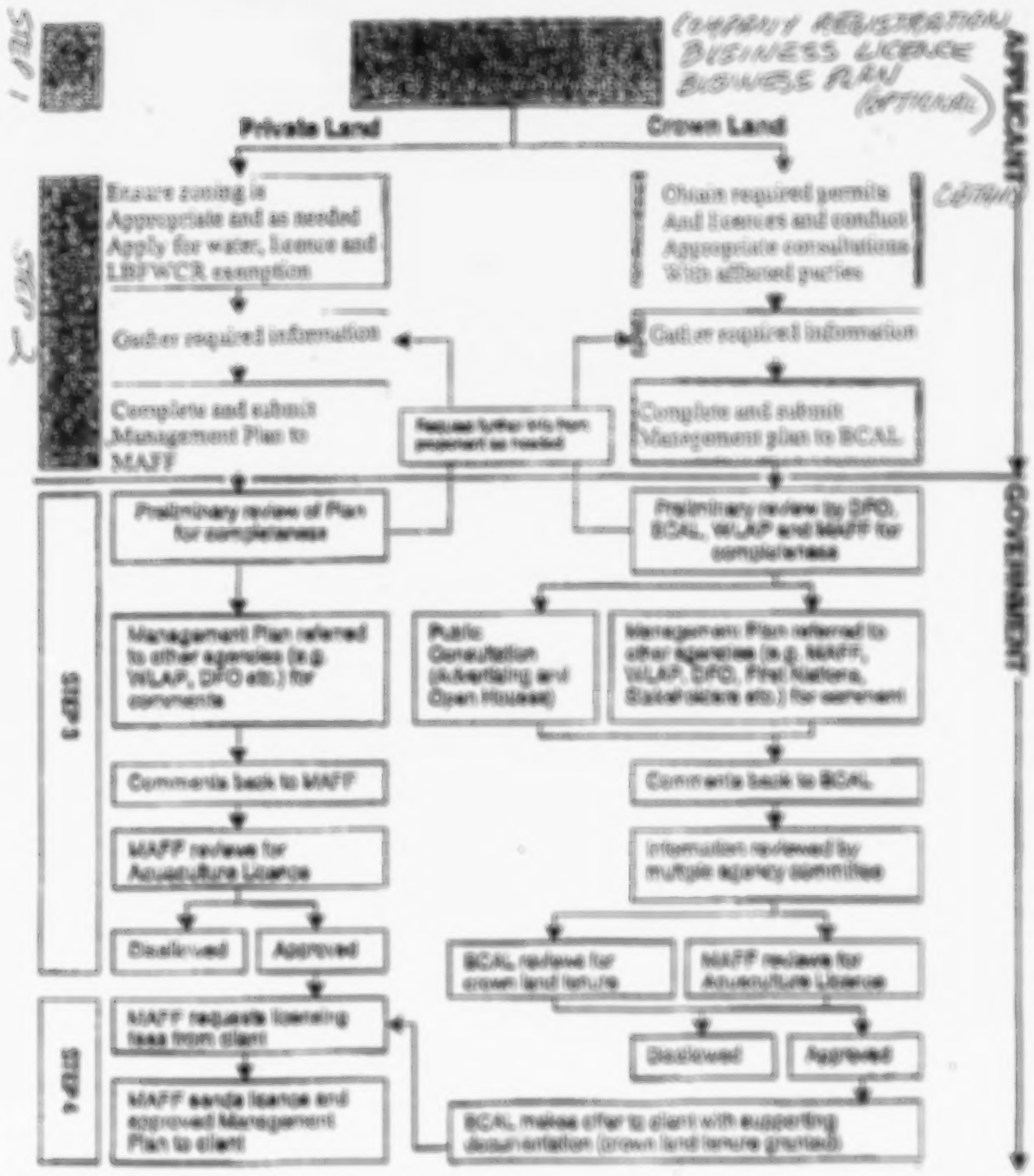
3. I find that all appropriate precautionary steps have been taken by Minister Hagen to deal with the unlikely event of any actual conflict arising in respect of each of his two ministries.

4. I find that the license and permit procedure established by the Minister of Agriculture, Food and Fisheries effectively eliminates any Ministerial intervention in the decision-making process involving fish farm licenses.

Dated the 13th day of February, 2003
In the City of Victoria in the Province of British Columbia

H.A.D. Oliver, QC
Commissioner

Licence and Permit Structure for Finfish Aquaculture in BC


COMPANY REGISTRATION
BUSINESS LICENCE
BUSINESS PLAN (OPTIONAL)
APPLICANT
Private Land
Crown Land
Ensure zoning is Appropriate and as needed Apply for water, licence and LEB/WCR exemption
Obtain required permits And licences and conduct Appropriate consultations With affected parties
CERTAIN
Gather required information
Gather required information
Complete and submit Management Plan to MAFF
Complete and submit Management plan to BCAL
GOVERNMENT
Preliminary review of Plan for completeness
Preliminary review by DFO, BCAL, WLAP and MAFF for completeness
Management Plan referred to other agencies (e.g. WLAP, DFO etc.) for comments
Public Consultation (Advertising and Open Houses)
Management Plan referred to other agencies (e.g. MAFF, WLAP, DFO, First Nations, Stakeholders etc.) for comment
Comments back to MAFF
Comments back to BCAL
MAFF reviews for Aquaculture Licence
Information reviewed by multiple agency committee
Disallowed
Approved
BCAL reviews for crown land tenure
MAFF reviews for Aquaculture Licence
MAFF requests licensing fees from client
Disallowed
Approved
MAFF sends licence and approved Management Plan to client
BCAL makes offer to client with supporting documentation (crown land tenure granted)